

### REMARKS

Claims 113-154 are pending. Claims 125, 132, and 139 are currently canceled. Claims 113, 114, 115, and 149 are currently amended.

Reconsideration of the application, as amended, is requested.

The amendment to claim 113 is supported, for example, by page 5, lines 17-23 and by Figs. 1 and 2.

The amendment to claim 114 is self-supporting.

Support for the amendment to claim 115 is found in the specification, for example, page 5, line 15, where "continuous" is positively recited. According to MPEP 2173.05(i), "If alternative elements are positively recited in the specification, they may be explicitly excluded in the claims." Further support can be found, for example, on page 6, lines 14-20 and in Figs. 3 and 4.

Support for the amendment to claim 149 is found in the specification, for example, page 5, lines 23-24, where "composed of a multitude of fibers" is positively recited. According to MPEP 2173.05(i), "If alternative elements are positively recited in the specification, they may be explicitly excluded in the claims."

### § 112 Rejections

Claims 140-148 stand rejected under 35 USC § 112, first paragraph, as purportedly failing to comply with the written description requirement.

The Office Action states,

The limitation "the second major side of the fibrous web is *at least partially exposed*" means that "the polymer forming the polymeric regions does not extend *through* the substrate" (independent claims 113-115) wherein the substrate is a **fibrous non-woven** web (Claim 140), was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The 35 USC § 112, first paragraph, written description support for the limitation "wherein the second major side of the fibrous nonwoven web is at least partially

exposed" in the application as filed is clear. Referring to Fig. 1, the specification states at page 5, line 23 that the web 10 may be a non-woven. Fig. 1 clearly shows that the second side 19 (referred to as the opposite side on page 5, line 21) is completely exposed. The Office Action statements about Fig. 5 and page 8, lines 4-7 do not change the fact that the limitation is clearly described on page 5, line 23 and in Fig. 1.

The Office Action states that Applicants arguments are not convincing because the specification as originally filed does not describe high density substrates. But the rejected claims do not recite "high density". Furthermore, the specification discusses on page 5, line 25 that the web material may be chosen based on properties such as breathability and porosity.

For at least these reasons, Applicant submits that the Office has not met the initial burden of presenting by a preponderance of evidence why a person skilled in the art would not recognize in an applicant's disclosure a description of the invention defined by the claims, as required in MPEP 2163.

Claims 140-148 stand rejected under 35 USC § 112, first paragraph, as purportedly failing to comply with the enablement requirement.

The Office Action states:

The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The limitation "the second major side of the fibrous web is ***at least partially exposed***" means that "the polymer forming the polymeric regions does not extend ***through*** the substrate", wherein the substrate is a **fibrous non-woven fibrous** material, was not described in the specification in such a way as to enable one skilled in the art to prevent the melted polymer to go ***through*** the **fibrous** material, the **woven** web or the **knit** web under the ***pressure*** of roll 58 against the roll 57 such that the second major side of the fibrous web is fully exposed.

Applicants note that the Office Action does not address Applicants previously presented argument with regard to the question of enablement. According to MPEP 2164.01, "The test of enablement is whether one reasonably skilled in the art could make

or use the invention from the disclosures in the patent coupled with information known in the art without undue experimentation." Applicants submit that the Office Action does not address certain relevant factors for determining whether one skilled in the art could make the invention without undue experimentation. Therefore, the Office has not met the initial burden of establishing a reasonable basis to question the enablement provided for in the claimed invention.

Applicants submit that all the information necessary for a person skilled in the art to practice the claimed invention can be found in the specification as filed. The specification states on page 5, line 25 that the web material may be chosen based on properties such as breathability and porosity. The materials used in the working examples include fibrous materials having a variety of basis weights. The working examples also indicate that the speed of the web (e.g., 4.6 m/min in Example 1 and 9.1 m/min in Example 5) can be altered as the polymer is deposited to make discrete patches of polymer. Furthermore, the polymer can be deposited at different rates (e.g., 0.5 kg/hour in Example 1 and 0.8 kg/hour in Example 4). Factors such as speed of the web and rate of depositing the polymer to form the discrete patch of polymer affect how much polymer is deposited on the web. Equipped with the information in the specification, a person having skill in the art could make the web construction claimed in claims 140-148 without undue experimentation.

Furthermore, the Office's position appears to be that a polymer can not be prevented from going through a fibrous material when pressure is applied to it. At the time the application was filed, the state of the art did not support this position. Applicants presented evidence based on U.S. Pat. No. 5,669,120 (Wessels et al.) that one skilled in the art would understand that when a polymeric material is deposited on only the first side of a substrate as described in the present specification (e.g., page 6, lines 14-26), whether the polymeric material would be present on the second major side of the substrate depends on the properties of the substrate such as porosity and thickness, even if the substrate is fibrous. Contrary to MPEP 707.07(f), which guides that the Office Action should have answered all material traversed, the Office Action did not comment on this evidence with regard to the question of enablement.

The grounds for rejection address only disclosure in a portion of the application without considering the entire specification and do not address the state of the art. Therefore, certain relevant Wands factors were not addressed, and the Office Action does not present a proper prima facie case of lack of enablement.

In summary, Applicants submit that the rejection of claims 140-148 under 35 USC § 112, first paragraph, cannot be sustained, and that the rejection should be withdrawn. Applicants have not amended claim 140-148 and note that there are no other grounds for rejection presented against these claims.

### **§ 102 Rejections**

Claims 149-150, and 152 stand rejected under 35 USC § 102(b) as purportedly anticipated by Wessels et al. (US 5,669,120).

Insofar as the rejection is applied to amended claim 149, it is respectfully traversed. Claim 149 as amended further clarifies what is meant by continuous film and recites that the continuous film is not composed of a multitude of fibers. The disclosure of Wessels et al. only disclose surface fasteners made from woven or knit cloth, which is made from fibers. Moreover, any modification of the disclosure of Wessels et al. to obtain surface fasteners not made from woven or knit cloth would change the principle of operation of Wessels et al. For at least these reasons claim 149 (and claims 150 and 152 which depend from claim 149) are patentable over Wessels et al.

The rejection of claims 149-150 and 152 under 35 USC § 102(b) as being anticipated by Wessels et al. (US 5,669,120) has been overcome and should be withdrawn.

### **§ 103 Rejections**

Claims 151 and 154 stand rejected under 35 USC § 103(a) as purportedly unpatentable over Wessels et al. (US 5,669,120).

Claims 151 and 154 depend from claim 149, which includes the limitation that the continuous thermoplastic film is not composed of a multitude of fibers. As described above, Wessels et al. only disclose surface fasteners made from woven or knit cloth,

which is made from fibers. Therefore, for at least these reasons, the rejection of claims 151 and 154 under 35 USC § 103(a) as being unpatentable over Wessels et al. (US 5,669,120) has been overcome and should be withdrawn.

Claim 153 stands rejected under 35 USC § 103(a) as purportedly unpatentable over Wessels et al. ('120) as applied above, and further in view of McCormack et al. (US 6,589,639).

Insofar as the rejection is applied to the currently amended claims, it is respectfully traversed. Claim 153 depends from claim 149, which includes the limitation that the continuous thermoplastic film is not composed of a multitude of fibers. Both cited references include a multitude of fibers and therefore do not meet the claims.

Furthermore, according to the disclosure of Wessels et al., thermoplastic must flow through the pile core sheet to into cavities on the opposite side. In this process both the hook elements 4b and a thermoplastic sheet 4a covering the pile core sheet S are formed. It is unclear from the Office Action how a substrate sheet of Wessels et al. could be replaced with the laminate composite of McCormack et al. and still allow for the thermoplastic to flow through the sheet. Therefore, the Office Action provides an insufficient rationale why a person having ordinary skill in the art would combine the cited art to obtain Applicants' claimed invention.

For at least these reasons, the rejection of claim 153 under 35 USC § 103(a) as being unpatentable over Wessels et al. ('120) as applied above, and further in view of McCormack et al. (US 6,589,639) has been overcome and should be withdrawn.

Claims 113, 116-120 and 122-125 stand rejected under 35 USC § 103(a) as purportedly unpatentable over Wessels et al. '120, as applied above, further in view of Allen et al. (US 5,547,531) for the reasons of record set forth in paragraph 9 of the Office Action mailed on 5/27/2009 because they recite limitations of cancelled claims 78, 83, 85-90, 92, 93, 95, 96, 101.

Insofar as the rejection is applied to the currently amended claims, it is respectfully traversed. Wessels et al. does not teach a fastener wherein "the second major

side of the fibrous web is at least partially exposed, and wherein the second major side of the fibrous web is free of the polymer making up the plurality of discrete polymeric regions". According to the disclosure of Wessels et al., thermoplastic must flow through the pile core sheet to into cavities on the opposite side. In this process both the hook elements 4b and a thermoplastic sheet 4a covering the pile core sheet S are formed. In these embodiments, the substrate is not exposed on the second major side of the substrate, and the second major side of the substrate is not free of polymer that forms the hooks. Allen et al. is relied upon in the Office Action to introduce additional layers, and does not change the requirement that thermoplastic must flow through the pile core sheet. Therefore, the combination of Allen et al. and Wessels et al. teaches away from the limitation "wherein the second major side of the fibrous (nonwoven) web is at least partially exposed".

For at least these reasons, the rejection of claims 113, 116-120 and 122-125 under 35 USC § 103(a) as being unpatentable over Wessels et al. '120, as applied above, further in view of Allen et al. (US 5,547,531) for the reasons of record set forth in paragraph 9 of the Office Action mailed on 5/27/2009 because they recite limitations of cancelled claims 78, 83, 85-90, 92, 93, 95, 96, 101 has been overcome and should be withdrawn.

Claims 113, 116-120 and 122-125 stand rejected under 35 USC § 103(a) as purportedly unpatentable over Wessels et al. '120 in view of Allen et al. '531, as applied above, and further in view of Provost et al. (US 5,606,781) for the reasons of record set forth in paragraph 10 of the Office Action mailed 5/27/2009 because they recite limitations of cancelled claims 78, 83, 85-90, 92, 93, 95, 96, 101.

Insofar as the rejection is applied to the currently amended claims, it is respectfully traversed. Wessels et al. does not teach a fastener wherein "the second major side of the fibrous web is at least partially exposed, and wherein the second major side of the fibrous web is free of the polymer making up the plurality of discrete polymeric regions". According to the disclosure of Wessels et al., thermoplastic must flow through the pile core sheet to into cavities on the opposite side. In this process both the hook elements 4b and a thermoplastic sheet 4a covering the pile core sheet S are formed. In

these embodiments, the substrate is not exposed on the second major side of the substrate, and the second major side of the substrate is not free of polymer that forms the hooks. Provost et al. is relied upon in the Office Action to provide evidence that hooks can be integrally molded with a base, can be co-extruded with a base, or can be provided on a thin base a laminated to a different sheet to form a substrate. Therefore, the combination of Provost et al., Allen et al., and Wessels et al. teaches away from the limitation "wherein the second major side of the fibrous (nonwoven) web is at least partially exposed".

For at least these reasons, the rejection of claims 113, 116-120 and 122-125 under 35 USC § 103(a) as being unpatentable over Wessels et al. '120 in view of Allen et al. '531, as applied above, and further in view of Provost et al. (US 5,606,781) for the reasons of record set forth in paragraph 10 of the Office Action mailed 5/27/2009 because they recite limitations of cancelled claims 78, 83, 85-90, 92, 93, 95, 96, 101 has been overcome and should be withdrawn.

Claims 114-115, 121 and 126-139 stand rejected under 35 USC § 103(a) as purportedly unpatentable over Wessels et al. '120 or over Wessels et al. '120 in view of Allen et al. '531 or Wessels et al. '120 in view of Allen '531 and Provost et al. '781, as applied above, further in view of Long et al. (US 5,624,429).

Applicants submit that the Office Action does not present a proper *prima facie* case of obviousness because (1) the cited art does not include each of the elements of the claims, (2) the Office Action provides an insufficient rationale why a person having ordinary skill in the art would modify the cited art to obtain Applicants' claimed invention, and (3) the Office Action provides an insufficient rationale why a person having ordinary skill in the art would combine the cited art to obtain Applicants' claimed invention.

The cited art, alone or in combination, does not disclose a plurality of discrete polymeric regions comprising a discrete patch of polymer having a perimeter that is entirely surrounded or bordered by a first major side of the nonwoven web, as recited in claim 114. Although the Office Action states in paragraph 9 that "hook regions having

hook elements 4b extending from the substrate 4a/S, as shown in Fig. 4, is entirely bordered by the first major side of the substrate," as required by the claim, it is unclear from the Office Action how a cross-sectional view of the web as shown in Fig. 4A-F of the Wessels et al. can support this position. None of the cross-sections appear to illustrate a discrete patch of polymer having a perimeter that is entirely bordered by a fibrous web. Instead, regions that appear to be polymeric in Figs. 4A-F (e.g., substrate sheet 4a), all appear to extend to an edge of the substrate illustrated. Therefore, the Office Action has not demonstrated that the cited art discloses a discrete patch of polymer having a perimeter that is entirely surrounded or bordered by a first major side of the nonwoven web.

With regard to the rationale why a person having ordinary skill in the art would combine and/or modify the cited art to obtain Applicants' claimed invention, the Office Action states:

Wessels et al. teaches a pile woven or knit core sheet as a loop material (See column 6, lines 12-14). Wessels et al. fails to teach that fibrous nonwoven can be used as a loop material.

However, Long et al teaches that a loop material can be provided by a nonwoven, woven or knit fabric (See column 20, lines 12-15).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have used nonwoven fabric as a loop material in Wessels et al instead of woven or knit fabric since Long et al teaches that a loop material can be provided by a nonwoven, woven or knit fabric.

Moreover, it is held that the selection of a known material based on its suitability for its intended use supported a prima facie obviousness determination in *Sinclair & Carroll Co. v. Interchemical Corp.*, 325 U.S. 327, 65 USPQ 297 (1945). See MPEP 2144.07.

As to claim 115, Wessels et al. teaches that since the pile core sheet is manufactured by weaving or knitting, it is possible to ***change the design*** of the pile core sheet in arrangement and orientation of piles and to determine ***the size, shape or arrangement of hook elements*** optionally. It is accordingly possible to cope instantly with various requirements for the surface fastener in which hook and loop elements coexist. (See column 10, lines 54-60).

The rationale provided in the Office Action is internally inconsistent. The Office Action states that a nonwoven material described by Long et al. could be used as the substrate sheet in Wessels et al. However, as a basis for its position that a discrete patch



of polymer having a perimeter that is entirely bordered by the first major side of the nonwoven web is an obvious choice of design, the Office Action relies upon Wessels et al. col. 10, lines 54-60, which says "since the pile core sheet is manufactured by weaving or knitting, it is possible to change the design of the pile core sheet". At least because of this inconsistency, the rationale lacks the rational underpinnings required for a proper prima facie case of obviousness, and the rejection cannot be sustained.

Furthermore, Applicants have previously presented arguments that Wessels et al., the entire disclosure of which is focused on how to form continuous stripes or rows of polymer hooks, teaches away from web constructions having "a discrete patch having a perimeter that is entirely bordered by the first major side of the substrate". For the reasons given below, Wessels et al. also teaches away from discontinuous patches as claimed in claim 115.

Wessels et al. teaches away from regions of hook elements that are not continuous in its discussion of methods of making the surface fasteners. Wessels et al. teaches articles in which a surface fastener is formed by passing a substrate S through a continuous injection molding or continuous extrusion apparatus to form a continuous web that includes continuous fastener regions. The continuous nature of these methods is discussed throughout the disclosure. Since the methods (i.e., continuous injection molding and continuous extrusion) used in Wessels et al. are referred to as continuous processes throughout the entire disclosure, a person skilled in the art would not have concluded that changing the configuration of the polymeric regions of Wessels et al. from continuous regions to discrete regions that are discontinuous, substantially circular, or have a perimeter that is entirely bordered by the substrate was an obvious matter of design choice, as asserted in the Office Action. No part of the disclosure of Wessels et al. teaches or suggests that the apparatus and methods disclosed therein could be used to provide the discrete patches (or discontinuous patches or substantially circular patches). A change from the continuous hook regions of Wessels et al. to the discrete patches of the claimed invention would require a change in basic operating principles of the continuous injection molding and continuous extrusion apparatuses and methods. Such a

change would be contrary to a stated object of Wessels et al.: "using a simple molding apparatus without any reconstruction" (col. 2, lines 58-59).

In response to this argument, the Office has stated, "Wessels et al. does not even describe apparatus for producing various arrangements of hook and loop regions because it is within the level of ordinary engineering skill to make various arrangements of hooks and loops." This statement does not accurately describe the reference, which does in fact describe apparatuses for making continuous stripes of hooks and illustrates them in Figs. 1, 2, and 5. In the case of the type of fastener shown in Figs. 7 and 8, the reference requires that the pores of the knit or woven material are large enough to pass molten resin throughout its *entire* area. Applicants submit that the teaching is consistent with areas of knit or woven material which are entirely surrounded by the polymer used to form the hook regions, which can be considered to be the opposite of what applicants are claiming. For at least these reasons, the Office Action response to these arguments is not convincing.

Also, in response to arguments traversing that a discrete patch of polymer having a perimeter that is entirely bordered by the first major side of the fibrous web is obvious in view of Wessels et al. as a matter of design choice, the Office Action states that the Board affirmed the Examiner's position about an obvious choice of design in the Decision rendered on 2/24/2006. But at the time of the Board Decision, the limitation of a "discrete patch of polymer having a perimeter that is entirely bordered by the first major side of the fibrous web" was not even recited in the claim. Therefore, this Office Action argument is also not convincing.

Allen et al. and Provost et al. do not remedy the deficiencies Wessels et al. in view of Long et al. described above with respect to the limitation "discrete patch of polymer having a perimeter that is entirely surrounded by the first major side of the nonwoven web". Allen et al. has been relied upon in previous Office Actions to introduce additional layers to the disclosure of Wessels et al. Previous Office Actions have stated that the Provost et al. is relied upon to provide evidence that hooks can be integrally molded with a base, can be co-extruded with a base, or can be provided on a thin base a laminated to a different sheet to form a substrate. These grounds of rejection

are rendered moot with respect to the currently amended claims, which do not include limitations concerning the second major surface of the substrate.

The rejection of claims 114-115, 121 and 126-139 under 35 USC § 103(a) as being unpatentable over Wessels et al. '120 or over Wessels et al '120 in view of Allen et al. '531 or Wessels et al. '120 in view of Allen '531 and Provost et al '781, as applied above, further in view of Long et al. (US 5,624,429) has been overcome and should be withdrawn.

Claim 115 stands rejected under 35 USC § 103(a) as purportedly unpatentable over Wessels et al. '120 or over Wessels et al '120 in view of Allen et al. '531 or Wessels et al. '120 in view of Allen '531 and Provost et al '781, further in view of Long et al. (US 5,624,429), as applied above, and further in view of Shoemaker (US 4,903,874).

The Office Action states:

Wessels et al. does not explicitly disclose *circular* shaped fasteners. However, Shoemaker teaches that mating **circular** VELCRO hook and loop pads may be used as fasteners (See column 4, lines 5-6).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have made regions S 1 and hook regions in Wessels et al of a *circular* shape since Shoemaker teaches that mating **circular** hook and loop pads may be used as fasteners, and Wessels et al does not limit its teaching to particular shapes.

There is no articulated reason with a rational underpinning of why a person having ordinary skill in the art would modify the disclosure of Wessels et al. in view of Shoemaker. Only the conclusion that it would have been obvious is provided. Therefore, a proper prima facie case of obviousness has not been made.

The rejection of claim 115 under 35 USC § 103(a) as being unpatentable over Wessels et al. '120 or over Wessels et al '120 in view of Allen et al. '531 or Wessels et al. '120 in view of Allen '531 and Provost et al '781, further in view of Long et al. (US 5,624,429), as applied above, and further in view of Shoemaker (US 4,903,874) has been overcome and should be withdrawn.

**§ 102/103 Rejections**

Claims 113, 116-120 and 122-125 stand rejected under 35 USC § 102(b) as purportedly anticipated by or, in the alternative, under 35 USC § 103(a) as obvious over Wessels et al. (US 5,669,120).

Insofar as the rejection is applied to the currently amended claims, it is respectfully traversed. Wessels et al. does not teach a fastener wherein "the second major side of the fibrous web is at least partially exposed, and wherein the second major side of the fibrous web is free of the polymer making up the plurality of discrete polymeric regions". According to the disclosure of Wessels et al., thermoplastic must flow through the pile core sheet to into cavities on the opposite side. In this process both the hook elements 4b and a thermoplastic sheet 4a covering the pile core sheet S are formed. In these embodiments, the substrate is not exposed on the second major side of the substrate, and the second major side of the substrate is not free of polymer that forms the hooks. The Office Action does not provide evidence that a person having ordinary skill in the art would modify Wessels et al. to obtain a web construction as claimed in amended claim 113.

The rejection of claims 113, 116-120 and 122-125 under 35 USC § 102(b) as being anticipated by or, in the alternative, under 35 USC § 103(a) as obvious over Wessels et al. (US 5,669,120) has been overcome and should be withdrawn.

In view of the above, it is submitted that the application is in condition for allowance. Examination and reconsideration of the application, as amended, is requested.

Respectfully submitted,

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